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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,531	10/16/2003	Gerald Duhamel	14296-17US CMB/clb	4017
31831 7590 02/13/2008 LABTRONIX CONCEPT INC. C/O OGILVY RENAULT 1981 MC GILL COLLEGE AVENUE SUITE 1600 MONTREAL, QUEBEC, H3A 2Y3 CANADA			EXAMINER HYLINSKI, STEVEN J	
			ART UNIT 3714	PAPER NUMBER
			MAIL DATE 02/13/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### **DETAILED ACTION**

1. The amendment filed on 12/18/2007 canceling all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because a method of encapsulating and analyzing a data structure is distinct from the data structure for a lottery ticket, because the two inventions are regarded as a distinct process of making (unelected invention), and a distinct product made (elected invention). Distinct inventions that are a process of making and product made are subject to restriction requirements if the conditions of MPEP 806.05(f) are met. The data structure of the electronic lottery ticket, which constitutes the elected invention, could have been formed simply through an email lottery ticket, which is disclosed in the prior art of Gatto, as discussed in the previous Office Action. An email containing an attached ticket does meet the broadest reasonable interpretation of a variable sized data structure of the elected invention, having separate utility and not requiring all of the particulars of the non-elected invention, particularly regarding encapsulating and analyzing steps.

Furthermore, a serious burden is placed on the examiner by having to consider the non-elected invention. According to MPEP 808.02, separate classifications show that each invention has attained recognition in the art as a separate subject for inventive effort, and also a separate field of search. The independent claims of the original invention, 1-38, are classified differently than the new claims 39-46, and would also require a different field of search that would be a serious burden on the examiner.

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Whereas the elected invention is classified under class 463, and more specifically in subclass 17, the new, non-elected invention is classified under class 707. The non-elected invention of new claims 39-46 would require an entirely new and different search strategy than was performed by the examiner to examine the elected invention of claims 1-38.

Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

### ***Conclusion***

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEVEN J. HYLINSKI whose telephone number is (571)270-1995. The examiner can normally be reached on M-Thurs. 7:00a-5:30p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hotaling can be reached on 571-272-4437. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John M Hotaling II/  
Primary Examiner, Art Unit 3714

/Steven J Hylinski/  
Examiner, Art Unit 3714